



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 21, 1996

Mr. Riley J. Simpson, City Attorney  
The City of Copperas Cove  
P.O. Drawer 1449  
507 South Main Street  
Copperas Cove, Texas 76522

OR96-0374

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38358.

The City of Copperas Cove (the "city") received through the office of the Chief of Police a request for a copy of the tape of an investigative interview with one of the witnesses in an ongoing internal investigation involving claims of sexual harassment within the Police Department. You contend the requested information is excepted from required public disclosure under section 552.102 of the Government Code. You state you have provided the requestor with a copy of an investigative report with the victim and witness names redacted. The requestor now asks for a copy of the tape of the interview of the witnesses. You contend that you cannot de-identify the tape and consequently do not have to provide the requestor with a copy of the tape under section 552.102.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. The information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d at 550. Section 552.102 is designed to protect public employees' personal privacy. The scope of section 552.102 protection,

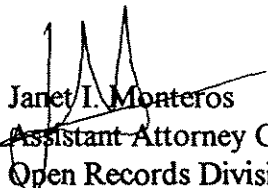
however, is very narrow. See Open Records Decision No. 336 (1982); see also Attorney General Opinion JM-36 (1983). Therefore, we will address whether section 552.101 applies to the tape.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

We find that the public interest in the statements of the witnesses concerning the alleged harasser outweighs any privacy interest he or the witnesses may have in that information. The tape you submitted serves to identify the victim and witnesses of alleged sexual harassment. The identity of the victim and witnesses to the alleged sexual harassment is protected by the common-law privacy doctrine as applied in *Ellen* and *Industrial Foundation*, consequently, the names of the individuals must be redacted before any information may be released to the public. Since the tape itself reveals the identification of the witnesses through their voices, we conclude that the tape should be withheld.<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

  
Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/ch

Ref.: ID# 38358

Enclosures: Submitted tape

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<sup>1</sup>If a transcription of the tape is available, that transcription should be made available to the requestor with the victim and witnesses names redacted from the transcript.

cc: Officer Julie Rome  
Police Department  
City of Copperas Cove  
507 South Main Street  
Copperas Cove, Texas 76522  
(w/o enclosures)